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Supreme Court, U.S.
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No. 98-649

In the
Supreme Court of the United States
October Term, 1998

CARA LINDQUIST,

Petitioner,

vs.

ALAN CONDRA and HORMEL FOODS CORPORATION,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the extensive factual record before the District Court, reviewed in a light most favorable to the Petitioner for purposes of summary judgment, established as a matter of law that Petitioner was an independent contractor and not an employee and thus not entitled to sue under Title VII of the Civil Rights Act of 1964.

LIST OF ALL PARENT COMPANIES AND NONWHOLLY OWNED SUBSIDIARIES

Pursuant to Rule 29(6) of the Rules of the Supreme Court of the United States, Respondent Hormel Foods Corporation states and represents that there is no parent company of Hormel Foods Corporation and that Respondent Hormel Foods Corporation's nonwholly owned subsidiaries are as follows:

Beijing Hormel Foods Co., Ltd.
Herdez Corporation
Hormel Alimentos S.A. de CV
KR-Hormel Foods (Partnership)
Viking Turkey Hatchery, LLC

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STATEMENT OF THE CASE

I. The Underlying Claims and Action against Respondent.

Petitioner ("Lindquist") filed this action against Respondent ("Hormel Foods") seeking damages for sex discrimination and retaliation in violation of Title VII of the Civil Rights Act, 42 U.S.C. 2000e, et seq. Hormel Foods is a corporation headquartered in Austin, Minnesota, which manufactures and distributes meat and grocery products.

Hormel Foods' Audio-Visual Department customarily contracted with outside independent contractors to provide technical assistance and/or equipment in the production of internal training and product information videotapes. Among others, Hormel Foods contracted with KSMQ-TV for technical assistance and/or equipment, and the services and equipment were provided through KSMQ-TV's production department, QTV Productions.

Lindquist was a full-time employee of KSMQ-TV from June 1992 through April 1994. Prior to her employment at KSMQ-TV, Lindquist received specialized training and acquired technical skills in broadcast journalism while in the military. While employed by KSMQ-TV, Lindquist was the producer of all on-air program promotion, director and coordinator of Healthline (a live on-air program), production assistant and/or editor for QTV Productions' clients, director/crew person during all station fundraising and programming and editor of fundraising production work when assigned. Lindquist resigned from her employment with KSMQ-TV in April 1994. Shortly thereafter, Lindquist was employed by KAAL-TV, a commercial television station

located in Austin, Minnesota, with the position of a news producer.

From June 1992 through April 1994, Lindquist was selected by QTV Productions of KSMQ-TV to work on approximately eight (8) Hormel Foods projects. It was in this context that Lindquist first began to work with Allan Condra ("Condra"), supervisor of Hormel's Audio-Visual Services Department. There is no dispute that KSMQ-TV was an independent contractor in providing these services to Hormel Foods.

After Lindquist resigned from KSMQ-TV, between April 1994 and November 1995 (a period of 609 days), Lindquist intermittently worked free-lance for Hormel Foods' Audio-Visual Department for her own account, on a purchase order and invoice basis. There were only ten (10) Hormel Foods projects. Most of the Hormel Foods projects lasted one to two days, and the total amount of time Lindquist spent on Hormel Foods projects over the 609-day period was 28 days. During the majority of this 609-day period, Lindquist was an employee of KAAL-TV. Accordingly, while she worked at KAAL-TV, Lindquist took vacation or unpaid leave to do the Hormel Foods projects. Lindquist resigned from KAAL-TV in April 1995.

At no time did Lindquist apply for a job with Hormel Foods, complete an application form, submit a resume, interview with anyone in Hormel Foods' personnel department, or sign the forms necessary to place her on the Hormel Foods payroll. Lindquist did not participate in any employee benefit or retirement programs and did not request or receive vacation pay or sick leave. She had no regularly scheduled hours of work, place of work or work week; instead, she began each of the ten projects with a new

purchase order identifying her as an independent contractor and ended each project by submitting an invoice to Hormel Foods. There was no employment contract or agreement, written or oral, spelling out duties, hours of work, or any other document defining duties or responsibilities. There was no contract obligating Hormel Foods to hire Lindquist nor, for that matter, obligating Lindquist to work any Hormel Foods project.

In October of 1993, while Lindquist was still employed by KSMQ-TV, she and Condra began a sexual relationship that ended in October of 1995. It is the nature of this relationship that is in dispute with Condra describing it as consensual and Lindquist characterizing it as sexual harassment. Lindquist admits that during her relationship with Condra she participated in the videotaping of numerous sexual encounters with Condra and sent him "love letters" expressing her love for him. After Condra attempted to end the affair, Lindquist asserted for the first time that Condra had sexually harassed her and responded by filing suit in district court. Lindquist's complaint alleges that she was the victim of sexual harassment and sexual discrimination in violation of both Title VII and the Minnesota Human Rights Act, Minn. Stat. §363.03, Subds. 1(2)(c) and 14, and that she was the victim of assault and battery.

II. The Decisions of the Courts Below.

By Order dated May 27, 1997, the Honorable Michael J. Davis, United States District Court for the District of Minnesota, Third Division, granted Hormel Foods' motion for summary judgment on Lindquist's Title VII sexual harassment and retaliation claims. The District Court "view[ed] the facts in their entirety, in a light most favorable to Plaintiff," and held that as a matter of law Lindquist was an

independent contractor, and thus she was not entitled to sue under Title VII. Judge Davis dismissed, without prejudice, Lindquist's state law claims of discrimination, retaliation, and negligent and intentional infliction of emotional distress, declining to exercise supplemental jurisdiction over such claims.

The Eighth Circuit, in an unpublished per curium opinion, affirmed the decision of Judge Davis. The Eighth Circuit Court noted its review was de novo, and that it affirmed the district court "[a]fter reviewing the record and considering it in the light most favorable to Lindquist . . ."

REASONS FOR DENYING THE WRIT

I. The factual record demonstrates that Lindquist was an independent contractor not entitled to sue under Title VII.

This Court has been asked to determine the meaning of "employee" where the statute containing the term does not helpfully define it. This Court again defined the term "employee" in *Nationwide Mutual Insurance Company v. Darden*, 503 U.S. 318, 112 S.Ct. 1344, 117 L.Ed.2d 581 (1992). Because ERISA failed to define the term "employee," the *Darden* Court applied the well established principle that:

> [w]here Congress uses terms that have accumulated settled meaning under . . . the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms. . . . In the past, when Congress has used the term 'employee' without defining it, we have concluded that Congress intended to describe the conventional master-servant relationship as understood by common-law agency doctrine.

Darden, 112 S.Ct. at 1348, quoting *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 109 S.Ct. 2166, 2172, 104 L.Ed.2d 811 (1989).

The test established in *Darden* for deciding who qualifies as an employee under ERISA is the test that was applied by the lower courts in the instant case in deciding that Lindquist was not an "employee" of Hormel Foods entitled to commence suit under Title VII. The *Darden* Court summarized the test as follows:

> In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished. Among the other factors relevant to this inquiry are the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.

Darden, at 1348. Of course, since this common-law test "contains 'no shorthand formula or magic phrase that can be applied to find the answer, . . . all of the incidents of the relationship must be assessed and weighed with no one factor being decisive.'" *Id.*, at 1349, quoting *NLRB v. United Ins. Co. of America*, 390 U.S. 254, 258, 88 S.Ct. 988, 991, 19 L.Ed.2d 1083 (1968).

Petitioner Lindquist does not claim a different test applies nor does she claim that the lower courts failed to recognize the *Darden* test. Rather, Lindquist's position is simply that the lower courts erred in determining she was not an employee of Hormel Foods. Lindquist argues that the lower courts enhanced the needed showing by Title VII plaintiffs by requiring proof of "actual control" as opposed to the "right to control." This narrow argument fails to recognize that control

is but one of the factors the courts consider in determining whether an individual is an "employee." But more importantly, and fatal to Lindquist's argument, is that the undisputed facts establish neither actual control nor the right to control. Instead, the undisputed facts considered in the light most favorable to Lindquist show that Condra's actual control was "murky" at best and **Hormel Foods' right to control was nonexistent**. As the Eighth Circuit Court explained,

> [t]here was never an agreement, either written or oral, between Lindquist and Hormel that obligated Hormel to hire Lindquist to work on projects requiring outside assistance. Likewise, Lindquist herself was under no obligation to work on any projects for Hormel.

Hormel Foods respectfully submits that even if this Court were to review de novo the undisputed facts in this case, it would conclude that there are no genuine issues of material fact and would affirm the lower courts' conclusion that Lindquist was an independent contractor.

II. The central issue is a narrow factual dispute that does not involve an important and recurring issue of federal law, a conflict between United States Circuit Courts nor a conflict with a state court of last resort.

This case does not present the Court with an opportunity to address an important, unsettled question of federal law. Rather, it merely poses the question whether the record supports the decision by the Federal District Court and the Eighth Circuit Court of Appeals. The decision of the Eighth Circuit is a straightforward application of the undisputed facts to the common law test established by this Court.

Accordingly, Petitioner wholly fails to set forth appropriate reasons to grant certiorari. *General Talking Pictures Corporation v. Western Electric Company*, 304 U.S. 175, 58 S.Ct. 849, 851, 82 L.Ed. 1273 (1938).

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Dated: November 19, 1998

Respectfully submitted,

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